THOMAS ALBERT

IBLA 75-298 Decided June 11, 1975

Appeal from decision of the Fairbanks, Alaska, District Office, Bureau of Land Management, partially rejecting native allotment application F-12615.

Affirmed.

1. Alaska: Native Allotments -- Patents of Public Lands: Effect -- Patents of Public Lands -- Suits to Cancel

Although a patent issued pursuant to an Alaska State selection may have been issued by mistake, it vested title in the State and removed from the jurisdiction of this Department the right to inquire into and consider all disputed questions of fact as well as rights in the land.

APPEARANCES: William B. Schendel, Esq., Alaska Legal Services Corporation, Fairbanks, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Thomas Albert appeals from a decision of the Fairbanks, Alaska, District Office, Bureau of Land Management, dated November 13, 1974, which partially rejected his native allotment application as to Parcel B covering parts of lots 8 and 9, sec. 7, T. 4 S., R. 5 W., F.M., Alaska, containing approximately 40 acres. 1/ The application

1/ The allotment application also covers Parcels A, C, and D, each containing approximately 40 acres. The decision found that the appellant had fully complied with the requirements of the act for making final proof, and stated that "[s]urvey has been requested for these parcels and further action will be taken toward issuing an Allotment Certificate when the plats of survey are filed in this office."

was rejected for the reason that this land was previously patented to the State of Alaska on June 15, 1961, pursuant to its selection rights under section 6 of the Statehood Act of July 7, 1958, 72 Stat. 339.

In sum, appellant argues that the Department has the obligation to file suit to cancel the patent, which was erroneously issued to the state, because he has used and occupied the land since 1930 and was entitled to the land for many years preceding the patent to the State of Alaska.

[1] The rejection of appellant's allotment application was proper because upon the issuance of the patent to the state the Department lost jurisdiction over the land. Ethel Aguilar, 15 IBLA 30 (1974); Clarence March, 3 IBLA 261 (1971); Everett Elvin Tibbets, 61 I.D. 397 (1954). This case is similar to March in which we held (and quoted with approval in Aguilar):

> The rulings in the decisions below rejecting the application because the lands have been patented to the state are correct. The effect of the issuance of a patent is to remove from the jurisdiction of this Department the inquiry into and consideration of all disputed questions of fact, including the determination of questions concerning rights to land. See Everett Elvin Tibbets, supra, at 399, and the United States Supreme Court decision and the Departmental decisions cited therein; Kelso B. Morris, A-28070 (October 26, 1959); Doris L. Ervin et al., A-29393 (July 8, 1963). This is sufficient to dispose of the proceeding at hand.
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> We decline to rule on appellant's request that this Board recommend institution of suit for cancellation of the State's patent. Rather, we order the case record returned to the Bureau of Land Management and suggest that the Bureau, the appellant and the Bureau of Indian Affairs, if they so desire, take the matter up with the Office of the Solicitor, the Department's office in charge of litigation matters. [3 IBLA at 264]

As in March, we decline to recommend institution of suit seeking cancellation of the State's patent, and we return the case record to the Bureau of Land Management for further consideration as suggested therein.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

I concur:

Martin Ritvo
Administrative Judge

I concur in the result:

Joseph W. Goss
Administrative Judge